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U.S. BANK FOR CT
SO. DIST. OF CALIF.

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

SOUTHER DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

THE VECHERY FAMILY TRUST DTD)
10/9/84; KEY BRANDS)
INTERNATIONAL, LTD.; and A W)
FINANCIAL GROUP, LLC.,)

CASE NO. 09-05397-LT7
adv. 09-90171

ANSWER TO COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT

Plaintiffs,)

v.)

WALID E. JAMIL and AWATIF S.)
JAMIL,)

Defendants.)

COMES NOW Defendants, WALID E. JAMIL and AWATIF S. JAMIL,
and answers Plaintiff's complaint to determine dischargeability
of debt as follows:

I

ANSWER

A. The Parties

1. These answering Defendants admits the allegations in

ANSWER TO COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT

1 paragraphs 1 through 4, inclusive, of Plaintiff's complaint.

2 2. These answering Defendants deny the allegations
3 contained in paragraph 5 of Plaintiff's complaint and
4 affirmatively allege that the Debtor Walid E. Jamil was a
5 shareholder of the corporation known as Jamil Holdings, Inc., dba
6 Universal Grocers and Abarrotera Mundial. A Mexico Corporation.
7 The debtor, Awatif S. Jamil was not a shareholder of either of
8 the corporations in which her husband was a shareholder. Neither
9 Defendant, Walid E. Jamil nor Awatif S. Jamil, were shareholders
10 of the corporation known as Tri-Mex Distributors, Inc., a
11 California Corporation.
12

13 3. These answering Defendants deny the allegations
14 contained in paragraph 6 of Plaintiffs complaint.

15 4. These answering Defendants admit the allegations
16 contained in paragraph 7 of Plaintiffs complaint.

17 B. Jurisdiction and Venue

18 5. These answering Defendants admit the allegations
19 contained in paragraphs 8 through 10 of Plaintiffs complaint.

20 C. Factual Background

21 6. These answering Defendants deny the allegations
22 contained in paragraphs 24, inclusive, of Plaintiffs complaint.
23 These answering Defendants admit that substantial documentation
24 was provided to Plaintiffs at Plaintiffs request to perform their
25 due diligence with regard to investing into the business
26 enterprise in Mexico. These answering Defendants further allege
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28

1 that all monies provided by Plaintiffs was in the form of
2 investments to the Mexico business enterprise and not loans as
3 alleged by Plaintiffs, and that therefore such sums are not due
4 and owing as the investment was lost in the business venture.

5 D. Count 1 - Exception to Discharge Under 11 U.S.C.
6 523(a)(2)(A)

7 7. In answer to paragraph 25 of Plaintiff's complaint,
8 these answering Defendants incorporate their answers to the
9 paragraphs incorporated therein as if set forth in full herein.

10 8. These answering Defendants admit the allegations
11 contained in paragraph 26 of Plaintiffs complaint.

12 9. These answering Defendants deny each and every
13 allegation contained in paragraphs 27 through 29 inclusive, of
14 Plaintiff's complaint. These answering Defendants affirmatively
15 aver that the funds provided were investment funds into a
16 business venture which were provided based upon the due diligence
17 of the Plaintiffs.

18
19 E. Count II - Exception to Discharge Under 11 U.S.C.
20 523(a)(2)(B)

21 10. In answer to paragraph 30 of Plaintiff's complaint,
22 these answering Defendants incorporate their answers to the
23 paragraphs incorporated therein as if set forth at full herein.

24 11. These answering Defendants admit the allegations
25 contained in paragraph 31 of Plaintiffs complaint.

26 12. These answering Defendants deny each and every
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1 allegation contained in paragraphs 32 through 36 inclusive, of
2 Plaintiff's complaint. These answering Defendants affirmatively
3 aver that the funds provided were investment funds into a
4 business venture which were provided based upon the due diligence
5 of the Plaintiffs.

6 F. Count III - Exception to Discharge Under 11 U.S.C. 523(a)(4)

7 13. In answer to paragraph 37 of Plaintiff's complaint,
8 this answering Defendant incorporates it's answers to the
9 paragraphs incorporated therein as if set forth at full herein.
10

11 14. These answering Defendants admit the allegations
12 contained in paragraph 38 of Plaintiffs complaint.

13 15. These answering Defendants deny each and every
14 allegation contained in paragraphs 2739 and 40 of Plaintiff's
15 complaint. These answering Defendants affirmatively aver that
16 the funds provided were investment funds into a business venture
17 which were provided based upon the due diligence of the
18 Plaintiffs.

19 G. Count IV - Exception to Discharge Under 11 U.S.C. 523(a)(6)

20 16. In answer to paragraph of Plaintiff's complaint, this
21 answering Defendant incorporates it's answers to the paragraphs
22 incorporated therein as if set forth at full herein. As to the
23 balance of the paragraph related to Section 523(a)(6) of the
24 bankruptcy Code, these answering Defendants admit the allegations
25 contained therein.

26 17. These answering Defendants deny the allegations
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1 contained in paragraphs 42 and 43 of Plaintiffs complaint.

2 II

3 AFFIRMATIVE DEFENSE

4 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
6 FOLLOWS:

7 Plaintiffs Complaint, and each and every purported cause of
8 action alleged therein, fails to state facts sufficient to
9 constitute a cause of action against these answering Defendants.
10

11 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
12 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
13 FOLLOWS:

14 Without admitting any of the allegations of the Complaint,
15 Defendants allege that Plaintiffs have failed to exercise
16 reasonable care for their protection against the type of damages
17 and incidents alleged to have occurred in this Complaint. If any
18 such damage has occurred, it was proximately and legally caused
19 in some portion, up to the whole thereof, by the Plaintiffs and
20 therefore any award against this answering Defendant, if any,
21 must be reduced in proportion to the comparative fault of the
22 Plaintiffs.

23 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
24 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
25 FOLLOWS:

26 Without admitting any of the allegations of the Complaint,
27
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1 Defendants are informed and believe, and thereupon allege, that
2 if Plaintiffs suffered any damage as a result of the allegations
3 set forth in this Complaint, Plaintiffs are not entitled to
4 recover from Defendants any damages due to Plaintiffs failure to
5 take reasonable efforts to mitigate the damages said Plaintiffs
6 allegedly incurred.

7 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
8 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
9 FOLLOWS:

10 Without admitting any of the allegations of the Complaint,
11 Defendants are informed and believe, and thereon allege, that if
12 these answering Defendants are found to be liable, then
13 Defendants action or inaction was not the sole, legal or
14 proximate cause of the incidents upon which liability is based or
15 damages awarded, if any, and that accordingly, any damages
16 awarded must be apportioned according to the respective fault of
17 all parties, persons or entities, or their agents, servants and
18 employees, who contributed to or caused the alleged incidents or
19 damages, according to proof at the time of trial.
20

21 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
22 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS
23 FOLLOWS:

24 Without admitting any of the allegations of the Complaint,
25 Defendants allege that Plaintiffs conduct relative to these
26 answering Defendants and the relationship between Plaintiffs and
27

1 these answering Defendants was such as to bring the Plaintiffs
2 into this lawsuit with unclean hands, and as such, Plaintiffs are
3 barred from pursuing the claims alleged.

4 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
6 FOLLOWS:

7 Without admitting any of the allegations of the Complaint,
8 Defendant is informed and believes, and thereon alleges, that the
9 Complaint filed by Plaintiffs against this Defendant was brought
10 without reasonable care and without a good faith belief that
11 there was a justiciable controversy under the facts and law which
12 warranted the filing of the Complaint against this responding
13 Defendant, as the agreement provided for the purchase of 50% of
14 OK stores, which purchase was acquired but through the failure of
15 Plaintiffs to complete the capital payments, the stores were
16 lost, and Plaintiffs now try to claim other entities as the basis
17 of the transaction, and as such Plaintiffs should therefore be
18 responsible for all of Defendant's necessary and reasonable
19 defense costs, including attorney's fees.

21 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
22 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS
23 FOLLOWS:

24 Without admitting any of the allegations of the Complaint,
25 Defendants are informed and believe, and thereon alleges that the
26 monies due as alleged in the complaint were in actuality funds
27

1 provided for capital contributions due and owing to the
2 identified corporate entities so that Plaintiffs could acquire an
3 interest in the Mexico business ventures after Plaintiffs
4 representatives, who are substantial sophisticated business
5 individuals, had fully performed their due diligence, and any
6 writings to the contrary were represented to Defendants by
7 Harvey Vechery to merely be to avoid any dispute between HARVEY
8 VECHERY and LINDA VECHERY, who were in actuality the true
9 investors with regard to such investment rather than to represent
10 any actual monies due and owing from Defendants.
11

12 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
13 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS
14 FOLLOWS:

15 Without admitting any of the allegations of the Complaint,
16 Defendants allege that if any contracts, obligations, or
17 agreements as alleged in the Complaint have been entered into,
18 any duty or performance of Defendants is excused by reason of
19 Plaintiffs breach of their obligations and commitments which lead
20 to the loss of the enterprise under which the monies were paid,
21 and specifically, that the funds were provided as an investment
22 to acquire three OK Stores in Mexico, as well as continue
23 operation of the Go4Valu enterprise with Defendants and
24 Plaintiffs each having a 50% interest in the stores. Plaintiff
25 agreed by letter of intent to provide capital to obtain the
26 stores and provide necessary inventory. Plaintiffs provided
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1 funds over an extended period of time greater than anticipated by
2 the parties and subsequently failed to provide the full capital
3 agreed, and that as a result thereof the failure to provide such
4 additional capital by the Plaintiffs caused the loss of the
5 stores.

6 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
7 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS
8 FOLLOWS:

9 Without admitting any of the allegations of the Complaint,
10 Defendants allege that the monies provided were not loans to be
11 repaid, but rather an investment in the Mexico ventures, which
12 investments were made by Plaintiffs after full and careful due
13 diligence and inspection of records and facilities, and therefore
14 the monies are subject to discharge as investments provided after
15 full and open investigation.
16

17 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND
18 AMENDED COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT
19 ALLEGES AS FOLLOWS:

20 Without admitting any of the allegations of the Complaint,
21 Defendants are informed and believes and based thereon allege
22 that the amounts invested by Plaintiffs were invested after
23 careful and diligent investigation of the financial condition of
24 the business venture as well as inspection of the facilities of
25 the business enterprise, and not as a result of any fraud or
26 improper conduct by Defendants.
27

1 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
2 SECOND AMENDED COMPLAINT AND EACH CAUSE OF ACTION THEREIN,
3 DEFENDANT ALLEGES AS FOLLOWS:

4 Without admitting any of the allegations of the Complaint,
5 Defendants are informed and believes and based thereon allege
6 that the amounts invested by Plaintiffs were invested after
7 careful and diligent investigation of the financial condition of
8 the business venture as well as inspection of the facilities of
9 the business enterprise, and not as a result of any conversion of
10 funds by Defendants of the monies invested into the business
11 venture.
12

13 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
14 SECOND AMENDED COMPLAINT AND EACH CAUSE OF ACTION THEREIN,
15 DEFENDANT ALLEGES AS FOLLOWS:

16 This answering Defendant presently has insufficient
17 knowledge or information upon which to form a belief as to
18 whether there may be additional, as yet unstated, affirmative
19 defenses. This answering Defendant therefore reserves the right
20 to assert additional affirmative defenses in the event discovery
21 indicates it would be appropriate.

22 WHEREFORE, this answering Defendant prays as follows:

23 1. That the claim of Plaintiffs are discharged pursuant to
24 the Bankruptcy Petition of the Defendants;

25 2. That these answering Defendants have judgment against
26 the Plaintiffs for costs of suit incurred herein;
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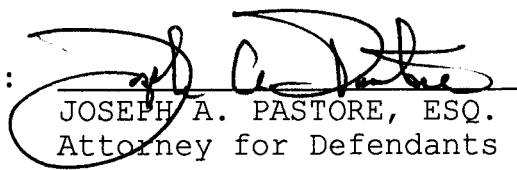
1 3. That these answering Defendants recover attorneys fees
2 incurred herein; and

3 4. For such other and further relief as this court may
4 deem just and proper.

5
6 DATED: April 29, 2009

SOREM & PASTORE, Lawyers

7
8
9 By:


JOSEPH A. PASTORE, ESQ.
Attorney for Defendants

| | |
|--|---|
| ATTORNEY(S) NAME & ADDRESS JOSEPH A. PASTORE SOREM & PASTORE 3570 Camino Del Rio North, Suite 103 San Diego, CA 92108 ATTORNEY FOR: Walid Jamil | TELEPHONE & FACSIMILE (619) 574-1545 (619) 574-1200 Bar No. 152167 FOR COURT USE ONLY FILED TS 09 MAY -5 PM 3:10 U.S. BANKRUPTCY CT SO. DIST. OF CALIF. |
| UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO DIVISION | |
| TITLE: WALID E. JAMIL AND AWATIF S. JAMIL | MAGISTRATE: Laura S. Taylor CHAPTER 7 |
| PROOF OF SERVICE (CCP 1011, 1013a(1) & (3) & Local Rules, Division II, Rule 5.2C) | CASE NUMBER 09-05397-LT7 <i>adv. 09-90171</i> |

I, **Judith Nuñez**, declare that: I am over the age of eighteen years and not a party to the action. My business address is 3570 Camino del Rio North, Suite 103, San Diego, California 92108-3712. On **May 4, 2009**, served the following document(s):

ANSWER TO COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

Service address(es):

Paul R. Hage, Esq.
 27777 Franklin Road
 Suite 2500
 Southfield, MI 48034
 - Attorney for Plaintiff

R. Soren Anderson
 4000 Crooks Road
 Suite 208
 Royal Oak, MI 48073
 - Attorney for Debtor

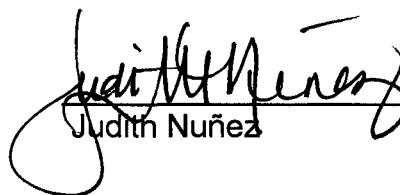
XX (By U.S. Mail) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses identified above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

____ (By fax transmission) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

____ (By personal service) I personally delivered the documents to the persons at the addresses listed above. (1) For a party represented in an envelope by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope of package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on **May 4, 2009**, at San Diego, California.


 Judith Nuñez